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WRITER'S E-MAIL.

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October 3, 2008

**BY HAND DELIVERY**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

**FEE RECEIVED**  
OCT 3 - 2008  
SURFACE  
TRANSPORTATION BOARD

Re: Docket No. 42110, Seminole Electric  
Cooperative, Inc. v. CSX Transportation, Inc.

Dear Secretary Quinlan:

Enclosed for filing in the referenced docket please find an original and 10 copies of the Verified Complaint of Seminole Electric Cooperative, Inc. Also enclosed is a word perfect diskette containing the Complaint, and a check in amount of the current requisite filing fee.

An additional copy of the Complaint also is enclosed. Kindly indicate receipt and filing of the Complaint by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

**FILED**  
OCT 3 - 2008  
SURFACE  
TRANSPORTATION BOARD

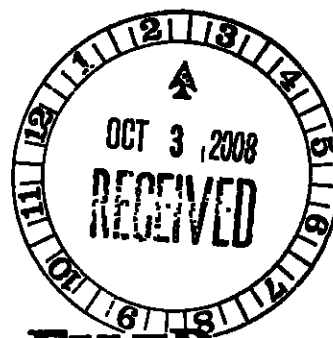
Sincerely,

Kelvin J. Dowd  
An Attorney for Seminole Electric  
Cooperative, Inc.

ENTERED  
Office of Proceedings  
OCT 3 - 2008  
Part of  
Public Record

KJD:lad

BEFORE THE  
SURFACE TRANSPORTATION BOARD



**FILED**

OCT 3 - 2008

**SURFACE  
TRANSPORTATION BOARD**

SEMINOLE ELECTRIC COOPERATIVE, INC.  
16313 North Dale Mabry Highway  
Tampa, Florida 33688

Complainant,

v.

Docket No. 42110

CSX TRANSPORTATION, INC.  
500 Water Street  
Jacksonville, Florida 32202.

Defendant.

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**SURFACE  
TRANSPORTATION BOARD**

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Public Record

**VERIFIED COMPLAINT**

COMES NOW Seminole Electric Cooperative, Inc. ("SECI"). and  
complains against CSX Transportation, Inc. ("CSXT") pursuant to 49 U.S.C.  
§§ 11701 and 11704.

By this Complaint, SECI seeks the establishment of just and  
reasonable rates, rules and other terms for unit train coal transportation service in  
shipper-supplied railcars to SECI's Seminole Generating Station ("SGS") near  
Palatka, Florida from (1) CSXT-served mine origins and origin groups in  
Kentucky, Illinois, Indiana, West Virginia and Pennsylvania; and (2) CSXT-  
served coal transfer terminal facilities at Charleston, South Carolina.

In support hereof, SECI states as follows:

### **THE PARTIES**

1. SECI is a non-profit electric generation and transmission cooperative headquartered in Tampa, Florida. SECI generates, sells and transmits bulk supplies of wholesale electricity, primarily to its ten member distribution cooperatives. The members, which also are not-for-profit entities, provide retail electric distribution services to residential, commercial and industrial consumers. Currently, SECI and its members serve nearly 900,000 metered residential and business consumers in 46 of Florida's 67 counties.

2. The primary energy resource serving SECI and its member systems is SGS, which is located in Northeast Florida near Palatka, in Putnam County. The two (2) coal-fired units at SGS currently are rated at 1,300 megawatts, and SGS consumes approximately 4,000,000 tons of coal each year. SECI presently is in the permitting phase for a third coal-fired unit, and upon completion of this new third unit, annual solid fuel consumption at the station is forecasted to increase to approximately 6,000,000 tons.

3. CSXT is a common carrier railroad engaged in the transportation of freight in interstate commerce. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, and to the jurisdiction of the Board. As further described *infra*, CSXT exerts sole control

over the establishment of rates, rules and other terms covering the transportation of coal to SGS.

### **COAL TRANSPORTATION TO SGS**

4. All of the coal consumed at SGS is delivered by rail, which is the only feasible means of transporting the volumes involved. Some of the station's rail shipments have originated at terminal transfer facilities at Charleston, South Carolina, which is almost 300 miles from Palatka, Florida, and Port St. Joe, Florida, which is about 340 miles away. Most of the coal for the station originates at several mines in the Illinois Basin and Appalachia, which are over 700 miles from Palatka.

5. Hypothetically, SGS could burn coal that originates on railroads other than CSXT and its regional railroad connections. However, the closest that any other railroad's lines come to Palatka is Jacksonville, Florida, some 60 miles to the north, where Norfolk Southern Railway ("NS") service from various eastern coal mines terminates. CSXT controls all deliveries to SGS that pass through Jacksonville.

6. With rare and widely intermittent, minor exceptions, CSXT or its predecessor companies have delivered all coal consumed at SGS since it commenced commercial operation. Since late 1998 and through the date of this Complaint, all coal shipped to the station has been transported by CSXT in all-rail service from various origins pursuant to a contract that SECI negotiated with

CSXT and entered into pursuant to 49 U. S. C. § 10709. Pursuant to the requirements of the contract, Seminole acquired a fleet of railcars, and has supplied the railcars used by CSXT to transport coal to SGS from at least 1998 through the present. The contract, denominated as Contract CSXT-68681, will expire on December 31, 2008.

**SECI'S EFFORTS TO SECURE  
REASONABLE RATES AND SERVICE TERMS**

7. In anticipation of the need for unit train coal service after 2008, and consistent with its own internal fuel budgeting requirements, SECI opened negotiations with CSXT over terms and conditions for a possible extension of or successor agreement to Contract CSXT-68681. Despite concerted efforts expended over several years, however, the parties were not able to reach agreement, due principally to widely divergent positions regarding what constitutes reasonable rates and service terms for the coal transportation at issue.

8. With no alternatives available, and faced with a continuing and urgent need for reliable projections of its 2009 fuel supply and transportation costs, SECI made a written request to CSXT in March of 2008 for the establishment or disclosure of the rates and service terms that CSXT would apply to the transportation of coal to SGS in common carriage in Seminole-supplied railcars, commencing January 1, 2009.

9. In correspondence dated May 13, 2008, CSXT confirmed that the common carriage rates applicable to coal movements to SGS are those set forth in Section 9 of Supplement 2 to Tariff CSXT-8200-Series, which by its terms contains coal rate districts, mileage scale prices, and rules and prices covering accessorial services on coal.

10. Section 9 of Supplement 2 to Tariff CSXT-8200 establishes common carrier rates for coal transportation service at a level of \$25.00 per ton, plus \$0.025 per ton for each mile of distance between the origin of the coal shipment and its destination. As applied to shipments to SGS from the seven (7) mine origins and Charleston terminal that were incorporated in SECI's March 2008 request to CSXT for common carrier rates, on information and belief the following base rates are produced by the mileage scale formula:

<u>Origin</u>	<u>Mileage</u>	<u>Rate per Ton</u>
Dotlik, KY	812	\$45.30
Epworth, IL	873	\$46.83
Warrior, KY	795	\$44.88
Elk Creek, KY	790	\$44.75
Sullivan, IN	920	\$48.00
Robinson Run, WV	1088	\$52.20
Bailey Mine, PA	1167	\$54.18
Charleston, SC	296	\$32.40

11. According to CSXT's Publication 8661-B, coal shipments moving to SGS in common carriage also are subject to a "fuel surcharge," which is calculated based upon the relationship between the monthly average price of on-highway retail diesel fuel published by the U.S. Energy Information

Administration and \$1.99 per gallon, and the distance that a shipment moves. On information and belief, as of October 1, 2008 the CSXT fuel surcharge applicable to SECI coal shipments moving under Tariff CSXT-8200 is \$0.58 per mile for each carload in the shipment. Based upon an average lading weight of 120 tons per SECI carload, as of October 1, 2008 the following total charges (CSXT rate plus fuel surcharge) apply to SECI coal shipments moving in common carriage to SGS:

<u>Origin</u>	<u>Rate per Ton</u>
Dotiki, KY	\$49.22
Epworth, IL	\$51.05
Warrior, KY	\$48.72
Elk Creek, KY	\$48.57
Sullivan, IN	\$52.45
Robinson Run, WV	\$57.46
Bailey Mine, PA	\$59.82
Charleston, SC	\$33.83

**CSXT POSSESSES MARKET DOMINANCE  
OVER COAL TRANSPORTATION TO PALATKA**

12. SGS currently consumes approximately 4,000,000 tons of coal each year, an annual volume which is expected to grow by at least 2,000,000 tons starting with commercial operation of the planned, new third unit. The vast preponderance of this coal does and will continue to originate at mines that are at least 700 miles away from the station. There are no navigable waterways by which coal feasibly could be delivered to the station. The only practical means by which the SECI coal volumes can be delivered is via rail.

13. CSXT is the only railroad that holds out to provide coal delivery service to SGS. While NS does serve some mines that produce coal that might be compatible with SECI's generation facilities, that carrier's lines come no closer to Palatka than Jacksonville, which is almost 60 miles away to the north. Accordingly, CSXT possesses "qualitative" market dominance over SECI's coal movements under 49 U.S.C. § 10707.

14. All common carrier transportation charges established by CSXT in Tariff CSXT-8200 and Publication 8661-B that apply to SECI's coal traffic are substantially in excess of 180% of the variable cost of the associated service. Accordingly, the jurisdictional threshold established under 49 U.S.C. § 10707 (d) is satisfied.

15. Because CSXT possesses market dominance over coal transportation to SGS, the Board has jurisdiction to adjudicate the reasonableness of CSXT's rates, rules and practices applicable to that transportation.

**THE COMMON CARRIER RATES, CHARGES AND SERVICE  
RULES ESTABLISHED BY CSXT FOR APPLICATION TO  
SECI'S COAL TRAFFIC ARE UNREASONABLE AND UNLAWFUL**

16. The common carrier transportation charges established by CSXT in Tariff CSXT-8200 and Publication 8661-B as applied to SECI's coal traffic exceed the maximum reasonable levels permitted under 49 U.S.C. §§ 10707(d)(1) and 10702, and therefore are unlawful.



17. In accordance with 49 C.F.R. Part 1111.1 (a), the reasonableness of the charges referenced in Paragraph 16 should be examined using the Constrained Market Pricing principles set forth in *Coal Rate Guidelines - Nationwide*, 1 I.C.C. 2d 520 (1985), as subsequently interpreted and applied in proceedings before the Board. This is so because coal shipments to SGS via CSXT involve high volume, repetitive unit train traffic.

18. Tariff CSXT-8200 and tariffs, circulars and publications referenced therein also include service terms which are inadequate to meet SECI's legitimate coal transportation needs, and constitute a departure from the established pattern of service provided by CSXT at least since 1998, which reflected CSXT's clear understanding of SECI's reasonable transportation requirements. SECI reserves the right to present evidence of the unlawfulness of one or more of those terms if, as applied to coal service to SGS, they result in unreasonable charges and/or constitute unreasonable practices in violation of 49 U.S.C. §§ 10702 and 10746.

19. This Complaint shall be deemed to apply to and likewise challenge any changes to the provisions of Tariff CSXT-8200 or Publication 8661-B, or any tariffs, circulars or publications referenced therein, as well as to any new tariffs, circulars, rates or charges that might be established by CSXT and applied to coal transportation service to SGS.

20. Neither this proceeding nor the granting of the relief requested herein will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant SECI prays that Defendant CSXT be required to answer the charges herein, and that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704 (a)(1) and the Board's implementing regulations, the Board: (1) find the challenged rates, charges, rules and practices to be unreasonable in violation of 49 U.S.C. §§ 10701 (d)(1), 10702 and/or 10746; (2) prescribe lawful maximum rates and charges, and reasonable rules and practices, as requested by SECI and demonstrated by the evidence to be adduced herein; (3) award damages to SECI pursuant to 49 U.S.C. § 11704 (b), to be calculated based on the record of this proceeding; and (4) grant to SECI such other and further relief as the Board may deem proper based on said record.

Respectfully submitted

SEMINOLE ELECTRIC  
COOPERATIVE, INC.

By: Kelvin J. Dowd  
Christopher A. Mills  
Daniel M. Jaffe



Of Counsel:

Slover & Loftus  
1224 Seventeenth Street, NW  
Washington, DC 20036  
202.347.7170

Joshua M. Hoffman  
Slover & Loftus  
1224 Seventeenth Street, NW  
Washington, DC 20036  
202.347.7170

Dated: October 3, 2008

Attorneys & Practitioners

**VERIFICATION**

STATE OF FLORIDA

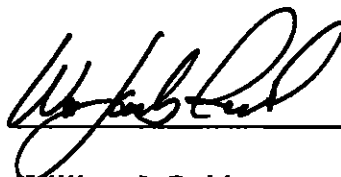
COUNTY OF

Hillsborough

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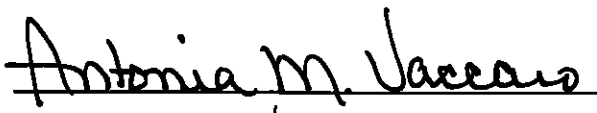
I, William J. Reid, verify under penalty of perjury that I am the  
Director of Fuel Supply of Seminole Electric Cooperative, Inc., that I have read  
the foregoing Complaint and know the factual statements set forth therein, and that  
the same are true as stated to the best of my knowledge, information and belief.



William J. Reid

Sworn and Subscribed

Before me this 29<sup>th</sup> day of September 2008.



Notary Public


My Commission expires: 6/13/11

ANTONIA M. VACCARO  
Notary Public, State of Florida  
Commission No. DD684877  
Qualified in Hillsborough County  
Commission Expires June 13, 2011

**CERTIFICATE OF SERVICE**

Pursuant to 49 C.F.R. Part 1111.3, I hereby certify that on this 3<sup>rd</sup> day of October, 2008, I caused copies of this Verified Complaint to be served by overnight express courier on the senior legal officer of Defendant CSX Transportation, Inc., as follows:

E.M. Fitzsimmons, Esq.  
Sr. Vice-President-Law,  
General Counsel and  
Corporate Secretary  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

  
\_\_\_\_\_  
Kelvin J. Dowd  
An Attorney for  
Seminole Electric Cooperative, Inc.